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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT JUNEAU**

MARY E. JOHN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Case No. 1: 08-CV-00014-JWS

COMPLAINT FOR PERSONAL INJURIES

COMES NOW the Plaintiff, MARY E. JOHN, by and through Mark Choate of the Choate Law Firm, LLC, and for cause of action against the Defendant, UNITED STATES OF AMERICA, on behalf of DEPARTMENT OF HEALTH & HUMAN SERVICES, INDIAN HEALTH SERVICES, SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM, and allege:

JURISDICTION

1. With respect to all claims, this Court has subject matter jurisdiction pursuant to 25 U.S.C. §450f (d). The amount in controversy is in excess of \$75,000.00 exclusive of interest and costs. At all times relevant herein Plaintiffs MARY E. JOHN was and is a resident of Juneau, Alaska.

2. SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM, (hereinafter SEARHC) is, and at all times mentioned herein, is a non-profit Alaska Native tribal health care organization established in 1975 under the provisions of the Indian Self-Determination Act.

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1 SEARHC is engaged in the business of operating a health care clinic for the purposes of
2 providing medical care and treatment to American Indians and Alaska Natives in Juneau,
3 Alaska, including plaintiff, MARY E. JOHN.

4 3. All jurisdictional prerequisites to bringing this action have been satisfied in
5 accordance with the Federal Tort Claims Act § 2675(a). On December 28, 2006, Plaintiff filed
6 Standard Form 95, *Claim for Damage, Injury, or Death* with the United States Department of
7 Health & Human Services, Indian Health Services and the Indian Health Service Claims
8 Branch.

9 4. On April 23, 2008 an employee of the Choate Law Firm called the Department
10 of Health and Human Services to inquire as to the status of the Tort Claim submission and left
11 a voice message. On April 24, 2008, Linda Vincent, believed to be a DHHS employee returned
12 that call and advised she was not the assigned case manager and that the attorney originally
13 assigned to the case was no longer employed with DHHS and provided another contact. On
14 May 13, 2008, Richard Bergerman from DHHS called and advised he did not have an attorney
15 to whom he could re-assign this claim and advised we should consider it denied.

16 5. It has been less than 6 months since Plaintiff's counsel was advised to consider
17 the claim denied.

18 6. The allegations in this Complaint arise from an incident that occurred on
19 September 12, 2006 on the premises of the SEARHC Medical Center, in Juneau, Alaska

20 FIRST CAUSE OF ACTION

21 Premises Liability

22 7. Plaintiff re-alleges the allegations of paragraphs 1 through 6 as if herein restated
23 in full.

24 8. On the morning of September 12, 2006, plaintiff MARY E. JOHN, was at the
25 Juneau Medical Center for a medical appointment. She was walking past the nurses' station
26 when one of the nurses went to open the window. The double-paned, metal-framed window
27 fell out and hit her on the right side of the crown of her head, grazing her right ear and

1 impacting her shoulder. She did not fall to the ground but cried out in pain. Several nurses
2 rushed to her assistance and lifted the glass away from her shoulder.

3 9. The Defendant's failure to exercise reasonable care to inspect, maintain and
4 guard the windows in the hallway in front of the nurses' station in a reasonably safe condition
5 was a substantial factor in the window falling upon plaintiff.

6 10. As a direct and legal result of the negligence and carelessness of the Defendant,
7 Plaintiff MARY E. JOHN was injured in her health, strength and activity, sustaining severe
8 shock and injury to her nervous system and person, and causing Plaintiff mental, physical and
9 nervous pain and suffering and resulting in disability, all to her general damage in a sum which
10 will be shown according to proof but in excess of \$75,000.00.

11 11. As a direct and legal result of said negligence and carelessness of the Defendant,
12 Plaintiff MARY E. JOHN was compelled to and did incur expenses for medical care,
13 hospitalization and other incidental expenses and will have to incur additional like expenses in
14 the future, all in amounts presently unknown to her. She therefore asks leave of court either to
15 amend this complaint to show the amount of her medical expenses, when ascertained, or to
16 prove said amount at the time of trial.

17 12. As a direct and legal result of the aforesaid carelessness and negligence of the
18 Defendant, Plaintiff MARY E. JOHN was disabled for a period of time and may be disabled in
19 the future and thereby be prevented from attending to the duties of her usual occupation.
20 MARY E. JOHN has therefore lost earnings, earning capacity and may continue to lose
21 earnings and earning capacity in the future, all in amounts presently unknown to her. She asks
22 leave of court either to amend this complaint to show the amount of said lost earnings, when
23 ascertained, or to prove said amount at the time of trial.

24 WHEREFORE, plaintiff prays for judgment against defendant as follows:

- 25 1. General damages in an amount that will conform to proof at time of trial;
- 26 2. Special damages in an amount that will conform to proof at time of trial;
- 27 3. Loss of earnings and impaired future earning capacity according to proof;
- 28 4. Medical and incidental expenses, past and future, according to proof;
5. For prejudgment interest as provided by law;

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6. For Rule 82 Attorneys Fees and Costs;
7. For Trial by Jury; and for
8. Such other and further relief as this Court deems proper.

DATED Wednesday, July 23, 2008, at Juneau, Alaska.

Respectfully submitted,
CHOATE LAW FIRM LLC


s/Mark Choate

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